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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,705	06/18/2001	Mitchell James Hubert	04027.00008	1042

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EXAMINER

MEDLEY, MARGARET B

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,705

Applicant(s)

HUBERT ET AL.

Examiner

Margaret B. Medley

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4/6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7 and 11-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Malinin SU 1,373,406.

Malinin teaches fire fighting foam concentrates, aqueous diluent compositions thereof, method of fighting fire with said compositions and methods of evaluating a fire fighting composition wherein said composition comprises a foamable fire fighting agent, a glycol ether and water soluble dye that anticipate the instant claims, note English abstract.

Claims 1, 6, 7 and 11-23 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Biller WO 97/43,012.

Biller teaches fire fighting foam concentrates, aqueous diluent's compositions thereof, method of fighting fire with said compositions and methods of evaluating a fire fighting composition wherein said compositions comprises a foamable fire fighting agent, a glycol ether and water soluble dye that anticipates the instant claims, note page 5, lines 13-29 and page 6, lines 1-27.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malinin SU 1,373,406.

Malinin further teaches dissolving of the nonionic surfactant in halo-hydrocarbon, notes the English Abstract.

It would be obvious to the artisan in the art that the resultant mixture of surfactant in a halo-hydrocarbon would produced a flourosurfactant-based foam which maybe alcohol resistant or non-alcohol resistant or that the resultant mixture may further comprise a hydrocarbon based foam that render the instant claims obvious.

Claims 2-6 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biller WO 97/43,012 in view of Stearn 5,124,363.

Applicant further claims a fluorosurfactant-based foamable fire fighting agent that is optionally alcohol resistant or that is non-alcohol resistant, or a hydrocarbon base foamable fire fighting agent (FFA) that wherein Biller is silent to said teachings.

It would be obvious to the artisan in the art to add the flourosurfactant base foamable (FFA) that is optional alcohol resistant or non-alcohol resistant, or hydrocarbon base of Stearn to the FFA of Biller thereby producing a hydrocarbon based or fluorosurfactant based FFA to render the instant claimed FFA obvious.

Stearn teaches aqueous based foams comprising fire retardant, dyes, pigment as optional components, note column 3, line 19-20; that the foam can be visually perceptible by a dye, column 4, lines 49-50; that the surfactants may be hydrocarbon based or fluorosurfactant based, note page 6, line 45 column 7, line 20; that optional components include dye, pigments and flame retardants, column 9, lines 47-48; Examples 2 and 3 of column 11 and Example 13 of column 16. Thus Stearn provides the motivation to further add fluorosurfactant-based foams that is optionally non-alcohol resistant or that is alcohol resistant to the FFA of Biller to render the instant claims obvious.

The prior art cited but not applied further teach fire-fighting foam comprising additives of the same nature as claimed by applicants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret B. Medley whose telephone number is (703) 308-2518. The examiner can normally be reached on Monday--Friday from 7:30 a.m. to 6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703)

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872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

M.B. Medley/dh
March 12, 2003


MARGARET MEDLEY
PRIMARY EXAMINER